

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

February 18, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1850

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**SENTRY INSURANCE, A MUTUAL
COMPANY,**

Plaintiff,

v.

JIM PIONTEK TRUCKING, INC.,

Defendant-Appellant,

**COMMERCIAL UNION MIDWEST
INSURANCE COMPANY,**

Defendant-Respondent.

APPEAL from a judgment of the circuit court for Brown County:
SUE E. BISCHER, Judge. *Affirmed.*

Before Cane, P.J., LaRocque and Myse, JJ.

MYSE, J. Jim Piontek Trucking, Inc., appeals a judgment dismissing its claim against Commercial Union Midwest Insurance Company alleging that Commercial Union had a duty to defend and indemnify Piontek

against a claim for damages to computer printout sheets from water damage occurring during shipment. Piontek claims that the trial court erred by concluding Commercial Union did not owe a duty to defend or indemnify Piontek under its policy, which insured Piontek from liability for damages claimed as a result of his hauling various products, including paper products. Piontek further claims that a policy exclusion, excluding liability for "accounts, records, documents and other valuable papers" was inapplicable. Because we conclude that the computer printouts are not paper products covered by the insuring portion of the insurance policy and, even if they were, the exclusion of liability coverage for "documents" excludes coverage for this claim, we affirm the judgment.

Telco hired Piontek Trucking to transport computer printout sheets it uses in its business. Telco was a telemarketing organization that sells information to its customers. The information was contained on the computer printout sheets being transported by Piontek. While Piontek was transporting the printout sheets, they sustained water damage. Telco was insured for the loss by Sentry Insurance, who paid Telco \$15,000 as a result of the damage to the documents. Sentry, in turn, sought recovery from Piontek for the amount it was required to pay.

Piontek notified its insurer, Commercial Union, of the claim and asked Commercial Union to assume the defense and to provide liability coverage for any damages Piontek may be required to pay as a result of the damages sustained. Commercial Union determined that the loss was not covered by its policy and sought a coverage hearing as part of a bifurcated trial. The trial court concluded that the exclusion of liability provision in the insurance policy that applied to accounts, records, documents and other valuable papers, excluded the claim from coverage. Piontek appeals this determination.

The interpretation of an insurance policy presents a question of law that this court determines without deference to the trial court's determination. *Smith v. Atlantic Mut. Ins. Co.*, 155 Wis.2d 808, 810, 456 N.W.2d 597, 598 (1990). In interpreting an insurance contract, the court first looks to the language of the contract. *Budget Rent-A-Car v. Shelby Ins. Group*, 197 Wis.2d 663, 669, 541 N.W.2d 178, 180 (Ct. App. 1995). An appellate court is not privileged to rewrite the terms of a policy, *Continental Casualty Co. v.*

Homontowski, 181 Wis.2d 129, 133, 510 N.W.2d 743, 745 (Ct. App. 1993). Any ambiguity existing in regard to coverage must be resolved in favor of the insured. *Smith*, 155 Wis.2d at 811, 456 N.W.2d at 598. The duty to defend is determined from the allegations contained in the complaint. *School Dist. v. Wausau Ins. Cos.*, 170 Wis.2d 347, 364-65, 488 N.W.2d 82, 87-88 (1992). If there are doubts as to the existence of a duty to defend, the doubt must be resolved in favor of the insured. *Id.* at 365, 488 N.W.2d at 87.

Piontek first argues that the policy provides liability coverage because the policy provides coverage for shipments of lawful goods described on the declaration page subject to some enumerated exclusions. The declaration page enumerates the following as goods to be covered: "Box meat, paper products, cheese, canned goods and cotton piece goods." Piontek contends that because the computer printout sheets are made of paper they fall within the definition of paper products. We do not agree. When construing an insurance policy, words are to be given their plain and ordinary meaning. *City of Edgerton v. General Cas. Co.*, 184 Wis.2d 750, 780, 517 N.W.2d 463, 476 (1994). A recognized dictionary may be used to discern the plain meaning of the policy's language. *Holsum Foods Div. of Harvest States Coops. v. Home Ins. Co.*, 162 Wis.2d 563, 569, 469 N.W.2d 918, 921 (Ct. App. 1991). The word "product" is defined by WEBSTER'S THIRD NEW INT'L DICTIONARY 1810 (Unabr. 1976), as "something produced." Paper products are, therefore, products that are produced from paper. Examples of such products are paper plates, napkins, cups and paper toweling.

That "documents" are not included within the description of paper products is clear from the policy language itself. First, we note that documents are specifically excluded by the policy language. In addition, the paper itself is not what gives a document its value; rather that which is upon the paper representing the thoughts or efforts of a person is what produces value. The value of paper products derives from the form of the material itself while the value of the computer printouts in question is not the paper upon which the information is contained but the information printed upon the paper. What is printed, written down or drawn on the paper represents the value of the computer printouts and was the subject of the claim for damages.

We therefore conclude that "paper products," as a description of goods carried, means products made of paper where the intrinsic value of the

product is in the form of the paper and the paper itself. The computer printouts have value because of the information imprinted on the paper and are not within the definition of "paper products" as that term is used as a description of goods carried.

Even if we were to assume arguendo that the computer printout sheets fall within the definition of paper products, we would still conclude that the insurance policy affords no coverage for the damage to the computer printout sheets. The policy contains an exclusion clause which provides:

B. What Property Is Not Covered

This policy does not insure your liability for:

1. Accounts, records, documents and other valuable papers[.]

Because the computer printout sheets are documents they fall within the expressed exclusion contained in the insurance policy. Piontek argues, however, that the exclusion should be construed to read that the policy does not insure liability for valuable accounts, valuable records, valuable documents and other valuable papers because the word valuable in the phrase other "valuable papers" is meant to modify each of the preceding nouns, i.e., accounts, records and documents. Further, Piontek argues that because the complaint seeks damages for "documents and not "valuable documents" this is sufficient to bring the case out of the exclusion clause.

This argument fails because even if we were to conclude that the word "valuable" modifies the term "documents," we do not agree that liability coverage is therefore granted by this policy. Although the complaint uses the term "documents" in seeking damages for Piontek's liability and not "valuable documents," if the documents had no value, no liability claim could be made because the owner of the documents would not have sustained a loss. Therefore, the claim for damages resulting from water damage to the computer printouts is within the document exclusion of the policy and no coverage is afforded.

Using the plain meaning of the language contained in the exclusion, we conclude that the computer printout sheets are not covered as "paper products" under the policy and therefore liability coverage is not

provided. Furthermore, we conclude that even if the damaged computer printouts were covered as "paper products" under the policy, the specific exclusion for "documents" precludes coverage in this case.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.